

¹ 5 U.S.C. §§ 8101-8193.

accepted his claim for closed fracture of the right tibia and fibula shaft. The accepted conditions were later expanded to include closed fracture of the medial malleolus of the right ankle and right osteochondritis dissecans. Appellant did not initially stop work but continued performing light-duty work and received wage-loss compensation on the daily rolls until he stopped on August 17, 2013.

On September 25, 2013 the employing establishment provided appellant with a temporary light-duty assignment as a modified city carrier. The duties and requirements of the position were within the work restrictions provided on May 28, 2013 by Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon serving as an OWCP referral physician.² These restrictions indicated that appellant could work eight hours per day with lifting, pushing, and pulling at no more than 10 pounds. He could walk or stand for eight hours per day, operate a motor vehicle at work for two hours per day, and operate a motor vehicle to/from work for two hours per day. Appellant did not accept the job offered by the employing establishment.

On October 11, 2013 appellant filed a claim for compensation for the period August 17, 2013 and continuing.

In an October 21, 2013 letter, OWCP requested that appellant submit medical evidence in support of his claim for disability. Appellant was advised that he is expected to accept the light-duty position offered by his employing establishment and to report for duty. He was provided 30 days to submit evidence to support that the modified assignment was no longer available or that the position no longer accommodated his medical restrictions.

In support of his claim, appellant submitted medical reports dated between October 11 and 29, 2013 of Dr. Cary P. Chapman, an attending Board-certified orthopedic surgeon. The reports did not contain a medical opinion, supported by objective findings and medical rationale, showing that appellant was totally disabled or unable to perform modified duties.

In a November 22, 2013 decision, OWCP denied appellant's claim for total disability stating that he had not established that he had a return or increase in disability due to a change/withdrawal of the limited-duty assignment made specifically to accommodate his work-related conditions.

Appellant requested a hearing before an OWCP hearing representative. During the June 12, 2014 hearing, appellant's counsel asserted that there was no work available for appellant within his medical restrictions noting that it was not clear that appellant could perform the walking and standing duties of the modified city carrier position. Counsel argued that appellant should have been on the periodic rolls instead of the daily rolls. Appellant testified regarding his job duties before stopping work. He indicated that he underwent surgery on his ankle on March 17, 2014.

Before and after the hearing, appellant submitted additional medical records, treatment notes, an operative report and physical therapy notes from Metropolitan Surgical Institute, Staten

² The job required performing the following duties for one to two hours per day: casing mail, delivering mail not to exceed 10 pounds, walking to deliver mail, and driving a postal vehicle.

Island Physical Therapy, Orthopedic Sports Medicine, and Dr. Chapman, dated from February 2013 to May 2014. The medical records indicated that appellant was still being treated for the work-related injuries, but they did not show that he was unable to perform modified work duties.

In an August 26, 2014 decision, OWCP hearing representative affirmed OWCP's November 22, 2013 decision denying appellant's claim for total disability on or after August 17, 2013.

LEGAL PRECEDENT

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³

ANALYSIS

OWCP accepted that appellant sustained a work injury on October 20, 2012 and accepted the conditions of closed fracture of the right tibia and fibula shaft, closed fracture of the medial malleolus of the right ankle, and right osteochondritis dissecans. Appellant did not stop work at the time of the injury but continued performing light-duty work. He stopped work on August 17, 2013 and on October 11, 2013, he filed a claim for compensation for the period August 17, 2013 and continuing.

Appellant submitted medical records, treatment notes, an operative report and physical therapy notes from Metropolitan Surgical Institute, Staten Island Physical Therapy, Orthopedic Sports Medicine, and Dr. Chapman, an attending Board-certified orthopedic surgeon, which were dated between February 2013 and May 2014. Although the medical records showed that appellant still had residuals of his work-related injuries, they did not show that he was unable to perform modified work duties on or after August 17, 2013. OWCP denied appellant's claim as he failed to establish total disability on or after August 17, 2013 due to his accepted work injuries.

³ *S.F.*, 59 ECAB 525 (2008); *Terry R. Hedman*, 38 ECAB 222 (1986). 20 C.F.R. § 10.5(x) provides, "*Recurrence of disability* means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."

Before OWCP and on appeal, counsel argued that there was no work available for appellant within his medical restrictions noting that it was not clear that he could perform the walking and standing duties of the modified city carrier position. However, modified duty remained available to appellant and a comparison of the work requirements of the modified position with appellant's work restrictions shows that he was able to perform the modified work. Counsel argued that appellant should have been on the periodic rolls instead of the daily rolls, but he did not explain how this viewpoint obviated appellant's responsibility to submit medical evidence showing that he had total disability on or after August 17, 2013 due to his accepted work injuries.⁴

For these reasons, the Board finds that appellant did not meet his burden of proof to establish total disability on or after August 17, 2013 due to his accepted work injuries.

CONCLUSION

The Board finds that OWCP properly denied appellant's claim for recurrence of total disability on or after August 17, 2013 due to his accepted work injuries.

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁴ Appellant also did not show a change in the nature and extent of the light-duty job requirements. *See supra* note 3.